



**ASIC**

Australian Securities &  
Investments Commission

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# ASIC Gazette

## Contents

### Markets Disciplinary Panel Infringement Notice

**Recipient:** ABN AMRO Clearing Sydney Pty Ltd

The recipient has complied with the infringement notice. Compliance is not an admission of guilt or liability; and the recipient is not taken to have contravened subsection 798H (1) of the Corporations Act 2001.

#### RIGHTS OF REVIEW

Recipients affected by the decision of the Markets Disciplinary Panel to give them an infringement notice under subsection 798H(1) of the *Corporations Act 2001* and Part 7.2A of the *Corporations Regulations 2001* administered by ASIC may have a right of review or may be entitled to have the infringement notice withdrawn. ASIC has published RG 216 to assist recipients to determine whether they have such rights – see RG 216.71 and RG 216.77 to 216.79. Copies of this document can be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au)

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## PART 7.2A OF THE CORPORATIONS REGULATIONS 2001 INFRINGEMENT NOTICE

**To:** ABN AMRO Clearing Sydney Pty Ltd  
Level 8  
50 Bridge Street  
SYDNEY NSW 2000

**TAKE NOTICE:** The Australian Securities and Investments Commission ("ASIC") gives this infringement notice to ABN AMRO Clearing Sydney Pty Ltd ACN 081 279 889 ("ABN AMRO") under regulation 7.2A.04 of the Corporations Regulations 2001 ("Regulations"). To comply with this notice ABN AMRO must:

Pay a penalty to ASIC, on behalf of the Commonwealth, in the sum of **\$130,000.**

This infringement notice is given on 27 September 2013.

The unique code for this notice as required by paragraph 7.2A.06(b) of the Regulations is MDP11709/13.

The terms defined in Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market) 2010 have the same meaning when used in this notice, including those set out in the Appendix to this notice.

### Alleged contravention and penalty

ABN AMRO was a Trading Participant in the Market operated by ASX at the relevant time and was therefore an entity required by subsection 798H(1) of the *Corporations Act 2001* ("Act") to comply with the market integrity rules at that time.

ABN AMRO is alleged to have contravened subsection 798H(1) of the Act by reason of contravening Rules 5.6.1, 5.6.3 and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010 ("MIR 5.6.1, MIR 5.6.3 and MIR 5.9.1").

MIR 5.6.1 provides:

*"A Trading Participant which uses its system for Automated Order Processing must at all times:*

- (a) have appropriate automated filters, in relation to Automated Order Processing; and*
- (b) ensure that such use does not interfere with:*
  - (i) the efficiency and integrity of the Market; or*

*(ii) the proper functioning of any Trading Platform."*

MIR 5.6.3 relevantly provides:

*"A Trading Participant which uses its system for Automated Order Processing must ensure that the system has in place:*

*(a) organisational and technical resources, including having appropriate automated filters, filter parameters and processes to record any changes to the filters or filter parameters, to enable Trading Messages to be submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;*  
*...."*

MIR 5.9.1 provides:

*"A Market Participant must not do anything which results in a market for a Product not being both fair and orderly, or fail to do anything where that failure has that effect."*

On the evidence before it, the Markets Disciplinary Panel ("MDP") was satisfied that:

- 1) On 13 February 2012, ABN AMRO granted access to its AOP system to a third party, being a software vendor ("Vendor") representing a client of ABN AMRO ("Client"), to install software to enable direct market access automated trading by the Client through ABN AMRO's AOP system. ABN AMRO also provided the Vendor with the pre-trade limits set for the Client in computer file format ("Pre-trade Limits File"), to be uploaded during the installation process.
- 2) During installation, although the Vendor uploaded the Pre-trade Limits File, it failed to include a specific computer command being "limit\_check=true" which would have activated the checking of pre-trade limits.
- 3) While ABN AMRO verified that the Pre-trade Limits File had been installed correctly, it did not check the contents of the Pre-trade Limits File for the presence of the specific computer command activating pre-trade limit checks.
- 4) As a result of both the missing computer command, and ABN AMRO's failure to check for the presence of the computer command, the pre-trade Order size limits and maximum position limits ABN AMRO had applied to the Client did not prevent Orders in excess of those limits being submitted into the ASX Trading Platform.
- 5) On 4 July 2012, at approximately 2:56pm, ABN AMRO on behalf of the Client began submitting a series of Orders in lots of 30,000 or less to sell FKP Property Group ("FKP") stapled securities (fully paid ordinary shares in FKP Limited and fully paid ordinary units in FKP Property Trust) at a price of \$0.40 ("Relevant Orders"), into the ASX Trading Platform.
- 6) The Relevant Orders were accepted by ABN AMRO through its AOP system and submitted into the ASX Trading Platform by virtue of the failure to include a computer command activating pre-trade limit checks.

- 7) At approximately 3:04pm, the Client's volume on the offer to sell FKP peaked at 166,694,946, at prices between \$0.39 and \$0.41, the majority of which were at \$0.40. This equated to approximately 13.75% of FKP's issued capital at the time.
- 8) By approximately 3:15pm, the Client had reduced its total volume on the offer to sell FKP, down to 372,000. This was achieved via a combination of the Client cancelling Orders, other participants trading against the erroneous offers to sell FKP, and the Client reducing its activity.
- 9) From approximately 3:08pm to 3:52pm, the Client's trading in FKP resulted in, FKP's price changing by \$0.01.
- 10) ABN AMRO's Risk team became aware of the Relevant Orders between approximately 3:02pm and 3:06pm, being approximately 6 to 10 minutes after the first of the Relevant Orders began to be submitted into the ASX Trading Platform.
- 11) Sometime before 3:25pm, ABN AMRO's DTR informed ABN AMRO's Managing Director of the Relevant Orders. Between approximately 3:25pm and 3:32pm, ABN AMRO's Head of Risk became aware of the Relevant Orders upon return to ABN AMRO's office from an external meeting. The subsequent investigation discovered the root cause of the contraventions at 5:20pm.
- 12) As a result of the Relevant Orders submitted into the ASX Trading Platform by ABN AMRO on behalf of the Client and through its AOP system:
  - (a) the total traded volume in FKP was 17.2 million (representing a value of \$6.9 million) versus the average daily FKP volume (for the preceding three months) of approximately 3.2 million; and
  - (b) the Client entered approximately 13,479 sell Orders for a total volume of 177,832,305, representing approximately 14.67% of FKP's issued capital at the time, the majority (94%) of which was placed at a price of \$0.40.

By reason of ABN AMRO's entry of the Relevant Orders into the ASX Trading Platform on 4 July 2012, the MDP has reasonable grounds to believe that ABN AMRO has contravened MIR 5.6.1, MIR 5.6.3 and MIR 5.9.1 and thereby contravened subsection 798H(1) of the Act in that ABN AMRO:

- did not have in place at all times, as required, an appropriate automated filter to address the issue of pre-trade limit checks;
- failed to have in place adequate organisational and technical resources to thoroughly verify the correct operation of third party software installed onto its AOP system, which interfered with the efficiency and integrity of the Market; and
- resulted in a market not both fair and orderly, with the entry of approximately 13,479 sell Orders for a total volume of 177,832,305, which represented approximately 14.67% of FKP's issued capital.

## Maximum pecuniary penalty that a Court could order

The maximum pecuniary penalty that a Court could order ABN AMRO to pay for contravening subsection 798H(1) of the Act:

- by reason of contravening MIR 5.6.1, is \$1,000,000;
- by reason of contravening MIR 5.6.3, is \$1,000,000;
- by reason of contravening MIR 5.9.1, is \$1,000,000.

The maximum pecuniary penalty that may be payable by ABN AMRO under an infringement notice given pursuant to subsection 798K(2) of the Act:

- by reason of contravening MIR 5.6.1, is \$600,000;
- by reason of contravening MIR 5.6.3, is \$600,000;
- by reason of contravening MIR 5.9.1, is \$600,000.

## Penalty under the Infringement Notice

The penalties imposed by the MDP for each of the alleged contraventions of subsection 798H(1) of the Act were as follows:

- MIR 5.6.1 – \$50,000;
- MIR 5.6.3 – \$70,000;
- MIR 5.9.1 – \$50,000.

However, the MDP considered it appropriate in this matter to make an adjustment to the total sum of the separate penalties set out above, to ensure that the final penalty payable was just and appropriate, and not excessive, having regard to the totality of the conduct, and other relevant factors. In doing so, the MDP had regard to paragraphs RG 216.125 and RG 216.126 of ASIC Regulatory Guide 216—*Markets Disciplinary Panel* ("RG 216"), and applied the totality principle in arriving at the appropriate pecuniary penalty to apply in this matter.

On this basis, and in accordance with subparagraphs 7.2A.06(g)(i) and (ii) and paragraph 7.2A.07(2) of the Regulations, for the alleged contraventions of subsection 798H(1) of the Act, the MDP imposed a total pecuniary penalty of \$130,000 (rounded up), comprised of as follows:

- MIR 5.6.1 – \$38,235.29;
- MIR 5.6.3 – \$53,529.41;
- MIR 5.9.1 – \$38,235.29.

Therefore, the total penalty that ABN AMRO must pay to the Commonwealth is **\$130,000**, being the penalty payable under this infringement notice for the alleged contraventions of subsection 798H(1) of the Act.

The penalty is payable to ASIC on behalf of the Commonwealth. Payment is made by bank cheque to the order of the "Australian Securities and Investments Commission".

In determining this matter and the appropriate pecuniary penalty to be applied, the MDP took into account all relevant guidance, including RG 216, and noted in particular the following:

- That the remedies applied should promote market integrity and confident and informed participation of investors in financial markets;
- MIR 5.6.1 is aimed at ensuring a fair, orderly and transparent trading system, with a strict obligation on Trading Participants which use systems for AOP, to ensure that at all times they have appropriate automated filters and that their AOP systems do not interfere with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;
- MIR 5.6.3 is aimed at promoting confidence in the integrity of the market by ensuring that Participants have adequate organisational and technical resources to ensure AOP systems operate without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;
- Accordingly, a Trading Participant which uses AOP systems is obliged at all times to have in place organisational and technical resources to ensure that the filters it has in place are in fact operational. This is a critical element in maintaining the integrity of the Market;
- AOP filters are an essential component of an electronic direct market access trading system used by clients of Trading Participants. AOP filters are in place to ensure Trading Messages are submitted into the Trading Platform without interfering with the efficiency and integrity of the Market or the proper functioning of the Trading Platform;
- The failure to ensure that AOP systems or electronic direct market access trading systems have these requisite safeguards, risks undermining market integrity because it poses a risk to public confidence in the Market;
- ABN AMRO for nearly four months failed to ensure that at all times it had appropriate automated filters, and failed to ensure that it had in place organisational and technical resources to confirm that the filters it had in place were operational;
- ABN AMRO's failure had the potential to damage the efficiency and integrity of the Market and to cause substantial damage or loss to third parties;
- An important procedure after granting a third party access to an AOP system is conducting thorough testing in a non-live environment to ensure that automated filters are operational. This is a critical measure in maintaining the integrity of a market;
- MIR 5.9.1 is aimed at ensuring a fair, open and transparent trading system, with a strict obligation on Market Participants not to do anything, which results in a market for a Product not being both fair and orderly. The misconduct had the potential to damage the reputation and integrity of the Market;
- The breaches were negligent;
- The breaches were of a serious nature;

- There were multiple breaches of the market integrity rules which occurred as part of a single, isolated course of conduct;
- ABN AMRO self-reported the breaches to ASIC;
- ABN AMRO did not derive any actual or potential benefit from the breaches;
- Automated filters on the other instances of the AOP system which were used by ABN AMRO to trade Products on the ASX were not rendered inoperative by the missing computer command, and all other automated filters within the AOP system relating to client direct market access automated trading, were also unaffected;
- ABN AMRO took remedial steps in response to the breaches including:
  - denying the Client access to its AOP system;
  - recruiting an Execution Risk specialist to enhance its internal controls and pre-trade filters relating to direct market access automated trading;
  - improving its organisational and technical resources to ensure that it checks and confirms that pre-trade filters are in place and are operational, before permitting client access to its AOP system;
  - escalating the matter to its immediate parent entity, ABN AMRO Clearing Bank N.V., which commenced a full review of direct market access automated trading; and
  - ABN AMRO engaged immediately with ASIC and ensured ASIC had full access to its senior personnel who demonstrated their appreciation of the gravity of the ASIC investigation;
- ABN AMRO has a minimal history of non-compliance including only one prior contravention found against it regarding non-compliance with the market integrity rules or ASX Market Rules. In 2009, the ASX Disciplinary Tribunal fined ABN AMRO (previously Fortis Clearing Sydney Pty Ltd) \$25,000 for breaching ASX Market Rule 13.3.1(a) (the predecessor rule to MIR 5.6.1);
- ABN AMRO co-operated with ASIC throughout its investigation and did not dispute any material facts; and
- ABN AMRO agreed not to contest this matter, thereby saving time and costs that would otherwise have been expended.

## Compliance with the Infringement Notice

ABN AMRO may choose not to comply with this infringement notice, but if ABN AMRO does not comply, civil proceedings may be brought against ABN AMRO in relation to the alleged contravention.

To comply with this infringement notice, ABN AMRO must pay the Penalty within the compliance period. The compliance period:

- (a) starts on the day on which the infringement notice is given to ABN AMRO; and
- (b) ends 27 days after the day on which the infringement notice is given to ABN AMRO;

unless an application is made for its extension.

ABN AMRO may apply to ASIC for an extension of time to comply with this notice under regulation 7.2A.09 of the Regulations. If ABN AMRO does so, and the application is granted, the compliance period ends at the end of the further period allowed.

If ABN AMRO applies for a further period of time in which to comply with this notice, and the application is refused, the compliance period ends on the later of:

- (a) 28 days after the day on which the infringement notice was given to the recipient; and
- (b) 7 days after the notice of refusal is given to the recipient.

ABN AMRO may apply to ASIC for withdrawal of this notice under regulation 7.2A.11 of the Regulations. If ABN AMRO does so, and the application is refused, the compliance period ends 28 days after the notice of refusal is given to ABN AMRO.

## Effect of issue and compliance with the Infringement Notice

The effects of compliance with this infringement notice are:

- (a) any liability of ABN AMRO to the Commonwealth for the alleged contravention of subsection 798H(1) of the Act is discharged;
- (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against ABN AMRO for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;
- (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against ABN AMRO for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of subsection 798H(1) of the Act;
- (d) ABN AMRO is not taken to have admitted guilt or liability in relation to the alleged contravention; and
- (e) ABN AMRO is not taken to have contravened subsection 798H(1) of the Act.

**Publication**

ASIC may publish details of this infringement notice under regulation 7.2A.15 of the Regulations.

**Susan Humphreys**

Counsel to the Markets Disciplinary Panel  
with the authority of a Division of the Australian Securities & Investments Commission

Dated : 27 September 2013

Note: Members of ASIC's Markets Disciplinary Panel constitute a Division of ASIC as delegates of the members of the Division for the purposes of considering the allegations covered by this notice.

## Appendix – Defined Terms

"ASX" means ASX Limited (ACN 008 624 691).

"Automated Order Processing" ("AOP") means the process by which orders are registered in a Trading Participant's system, and, if accepted for submission into a Trading Platform by the Trading Participant submitted as a corresponding Trading Message without being keyed or rekeyed by a Designated Trading Representative ("DTR").

"DTR" means a Representative of the Trading Participant who has been authorised by the Trading Participant to submit Trading Messages to the Trading Platform on behalf of the Trading Participant.

"Market" means the market operated by the Market Operator under Australian Market Licence (Australian Stock Exchange Limited) 2002.

"Market Participant" means a Participant in the Market admitted under the Market Operating Rules.

"Order" relevantly means:

- (a) in relation to Cash Market Products, an instruction to purchase or sell Cash Market Products, or an instruction to amend or cancel a prior instruction to purchase or sell Cash Market Products; and

.....

"Trading Messages" means those messages submitted into a Trading Platform relating to trading functions, such as Orders, amendment or cancellation of Orders and the reporting or cancellation of Market Transactions on the Trading Platform.

"Trading Participant" means a Market Participant which has Trading Permission in respect of one or more products.

"Trading Permission" means the right to submit Trading Messages in a trading Platform.

"Trading Platform" means a facility made available by the Market Operator to Trading Participants for the entry of Trading Messages, the matching of Orders, the advertisement of invitations to trade and the reporting of transactions.